

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 685

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO ELECTIONS; CHANGING PROVISIONS FOR THE DELIVERY AND
HANDLING OF ABSENTEE BALLOTS; PROVIDING STANDARDS FOR THE
OPERATION OF ALTERNATE VOTING LOCATIONS; CHANGING PROVISIONS
FOR EARLY ABSENTEE VOTING; AMENDING AND REPEALING SECTIONS OF
THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTION OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-6-5 NMSA 1978 (being Laws 1969,
Chapter 240, Section 131, as amended) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

A. The county clerk shall mark each completed
absentee ballot application with the date and time of receipt
in the clerk's office and enter the required information in the
absentee ballot register. The county clerk shall then

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1 determine if the applicant is a voter, an absent uniformed
2 services voter or an overseas voter.

3 B. If the applicant does not have a valid
4 certificate of registration on file in the county and is not a
5 federal qualified elector or if the applicant states that the
6 applicant is a federal qualified elector but the application
7 indicates the applicant is not a federal qualified elector, an
8 absentee ballot shall not be issued and the county clerk shall
9 mark the application "rejected" and file the application in a
10 separate file from those accepted.

11 C. The county clerk shall notify in writing each
12 applicant of the fact of acceptance or rejection of the
13 application and, if rejected, shall explain why the application
14 was rejected.

15 D. If the applicant has on file with the county a
16 valid certificate of registration that indicates that the
17 applicant is a voter who is a new registrant and who registered
18 by mail without submitting the required voter identification,
19 the county clerk shall notify the voter that the voter must
20 submit with the absentee ballot the required physical form of
21 identification. The county clerk shall note on the absentee
22 ballot register and signature roster that the applicant's
23 absentee ballot must be returned with the required
24 identification.

25 E. If the county clerk finds that the applicant is

1 a voter other than a federal qualified elector or overseas
2 voter, the county clerk shall mark the application "accepted"
3 and, beginning twenty-eight days before the election, deliver
4 an absentee ballot to the voter in the county clerk's office or
5 mail to the applicant an absentee ballot and the required
6 envelopes for use in returning the ballot. If the county clerk
7 finds that the applicant is a federal qualified elector or
8 overseas voter, the county clerk shall mark the application
9 "accepted" and beginning forty-five days before the election,
10 mail to the applicant an absentee ballot and the required
11 envelopes for use in returning the ballot. Acceptance of an
12 application of a federal qualified elector constitutes
13 registration for the election in which the ballot is to be
14 cast. Acceptance of an application from an overseas voter who
15 is not an absent uniformed services voter constitutes a request
16 for changing information on the certificate of registration of
17 any such voter. An absent voter shall not be permitted to
18 change party affiliation during those periods when change of
19 party affiliation is prohibited by the Election Code. Upon
20 delivery of an absentee ballot to a voter in the county clerk's
21 office or mailing of an absentee ballot to an applicant who is
22 a voter, an appropriate designation shall be made on the
23 signature line of the signature roster next to the name of the
24 voter who has been provided or mailed an absentee ballot.

25 F. If an application for an absentee ballot is

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1 delivered in person to the county clerk and is accepted, the
2 county clerk shall provide the voter an absentee ballot and it
3 shall be marked by the applicant in a voting booth of a type
4 prescribed by the secretary of state, sealed in the proper
5 envelopes and otherwise properly executed and returned to the
6 county clerk or the clerk's authorized representative before
7 the voter leaves the office of the county clerk. The act of
8 marking the absentee ballot in the office of the county clerk
9 shall be a convenience to the voter in the delivery of the
10 absentee ballot and does not make the office of the county
11 clerk a polling place subject to the requirements of a polling
12 place in the Election Code other than is provided in this
13 subsection. It is unlawful to solicit votes, display or
14 otherwise make accessible any posters, signs or other forms of
15 campaign literature whatsoever in the clerk's office or
16 alternate voting location. In marking the absentee ballot, the
17 voter, pursuant to the provisions of Section 1-12-15 NMSA 1978,
18 may be assisted by one person of the voter's choice.

19 G. Absentee ballots may be marked in person at the
20 county clerk's office during the regular hours and days of
21 business beginning on the twenty-eighth day preceding the
22 election and from 10:00 a.m. to 6:00 p.m. on the Saturday
23 immediately prior to the date of the election. [~~In marking the~~
24 ~~absentee ballot, the voter, pursuant to the provisions of~~
25 ~~Section 1-12-15 NMSA 1978, may be assisted by one person of the~~

1 ~~voter's choice.~~ If the county clerk establishes an additional
 2 alternate voting location near the clerk's office, absentee
 3 ballots may be marked in person at that location during the
 4 regular hours and days of business beginning on the twenty-
 5 eighth day preceding the election and during the hours for
 6 voting at alternate voting locations commencing on the third
 7 Saturday prior to the election through the Saturday immediately
 8 prior to the election.

9 ~~[G.]~~ H. Absentee ballots shall be sent to
 10 applicants not later than on the Friday immediately prior to
 11 the date of the election.

12 ~~[H.]~~ I. An absentee ballot shall not be delivered
 13 or mailed by the county clerk to any person other than the
 14 applicant for such ballot.

15 ~~[I.]~~ J. The secretary of state and each county
 16 clerk shall make reasonable efforts to publicize and inform
 17 voters of the times and locations for absentee voting;
 18 provided, however, that notice is provided at least ten days
 19 before early voting begins.

20 ~~[J.]~~ K. The secretary of state shall establish
 21 procedures for the submittal, when required by federal law, of
 22 required voter identification with mailed-in absentee ballots."

23 Section 2. Section 1-6-5.7 NMSA 1978 (being Laws 2005,
 24 Chapter 270, Section 40) is amended to read:

25 "1-6-5.7. EARLY VOTING--USE OF ABSENTEE VOTING

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1 PROCEDURES--ALTERNATE VOTING LOCATIONS.--

2 A. Commencing on the third Saturday prior to an
3 election and ending on the Saturday immediately preceding the
4 election, an early voter may vote in person on a voting system
5 at an alternate voting location established by the county
6 clerk.

7 B. In class A counties with more than two hundred
8 thousand registered voters, the county clerk shall establish
9 not [~~less~~] fewer than twelve alternate voting locations as a
10 convenience to the voters. For class A counties with two
11 hundred thousand registered voters or fewer, the county clerk
12 shall establish not [~~less~~] fewer than four alternate voting
13 locations. In non-class A counties with more than ten thousand
14 registered voters, the county clerk shall establish at least
15 one alternate voting location. In non-class A counties with
16 ten thousand registered voters or fewer, early voting shall be
17 conducted in the office of the county clerk or at such
18 [~~alternative~~] alternate locations as may be designated by the
19 county clerk. [~~Early voting may be done at an alternate~~
20 ~~location from 12:00 p.m. to 8:00 p.m., Tuesday through Friday,~~
21 ~~and 10:00 a.m. to 6:00 p.m., Saturday through the Saturday~~
22 ~~immediately prior to the election.~~

23 B.] C. Not later than ninety days before each
24 primary and general election, the county clerk shall publicly
25 fix the hours of operation for alternate voting locations in

1 the county. Alternate voting locations shall be open each day
2 of early voting for at least eight consecutive hours, which may
3 include evenings. Alternate voting locations may be closed
4 Sundays and Mondays during the early voting period.

5 D. Each alternate voting location shall comply with
6 the following provisions, unless the county clerk receives a
7 written waiver from the secretary of state specifying the
8 location and specific provision being waived:

9 (1) have ballots available for voters from
10 every precinct in the county;

11 (2) have at least one optical scan tabulator
12 programmed to read every ballot style in the county;

13 (3) have at least one voting system available
14 to assist disabled voters to cast and record their votes;

15 (4) have a broadband internet connection;

16 (5) have sufficient spaces for at least five
17 voters to simultaneously and privately mark their ballots, with
18 at least one of those spaces wheelchair-accessible;

19 (6) have a secure area for storage of ballots
20 or storage of a ballot on demand printing system; and

21 (7) be in a location that is accessible and
22 compliant with the requirements of the federal Americans with
23 Disabilities Act of 1990.

24 E. When voting early, the voter shall provide the
25 required voter identification to the county clerk or the

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1 clerk's authorized representative. If the voter does not
2 provide the required voter identification, the voter shall be
3 allowed to vote on a provisional ballot. If the voter provides
4 the required identification, the voter shall be allowed to vote
5 after subscribing an application to vote in accordance with
6 secretary of state rules. The county clerk or the clerk's
7 authorized representative shall make an appropriate designation
8 on the signature roster next to the voter's name indicating
9 that the voter has voted early."

10 Section 3. Section 1-6-6 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 132, as amended by Laws 2003, Chapter 356,
12 Section 21 and by Laws 2003, Chapter 357, Section 3) is amended
13 to read:

14 "1-6-6. ABSENTEE BALLOT REGISTER.--

15 A. For each election, the county clerk shall keep
16 an "absentee ballot register", in which [~~he~~] the county clerk
17 shall enter:

- 18 (1) the name and address of each absentee
19 ballot applicant;
20 (2) the date and time of receipt of the
21 application;
22 (3) whether the application was accepted or
23 rejected;
24 (4) the date of issue of an absentee ballot in
25 the county clerk's office or at an alternate location or the

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1 mailing of an absentee ballot to the applicant;

2 (5) the applicant's precinct;

3 (6) whether the applicant is a voter, [~~a~~
4 ~~federal voter~~] a federal qualified elector or an overseas
5 voter;

6 (7) whether the voter is required to submit
7 identification pursuant to Section 1-6-5 NMSA 1978; and

8 (8) the date and time the completed absentee
9 ballot was received from the applicant by the county clerk or
10 the absent voter voted early in person in the county clerk's
11 office or at an alternate location.

12 B. [~~Within twenty-four hours after receipt of a~~
13 ~~voter's application for an absentee ballot~~] Absentee ballots
14 shall be sent to applicants beginning twenty-eight days before
15 the election. For each application for an absentee ballot
16 received twenty-three or more days before the election, the
17 county clerk shall send either the ballot or a notice of
18 rejection to the applicant as soon as practicable, provided it
19 is sent not later than twenty-two days before the election.
20 Within twenty-two days of election day, the county clerk shall
21 [mail] send either the ballot [if it is within twenty-eight
22 days of election day] or a notice of rejection to the applicant
23 within twenty-four hours after receipt of the voter's
24 application for an absentee ballot.

25 C. The absentee ballot register is a public record

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1 open to public inspection in the county clerk's office during
2 regular office hours. The county clerk shall have an updated
3 absentee ballot register available for public inspection Monday
4 through Friday during regular office hours.

5 D. The county clerk shall deliver to the absent
6 voter precinct on election day a complete list of all absentee
7 ballot applicants and early voters with applicable information
8 shown in the absentee ballot register for each applicant and
9 early voter up to 6:00 p.m. on the Saturday preceding the
10 election. The county clerk shall deliver a signature roster
11 containing the same information as the lists to the absent
12 voter precinct board.

13 E. Upon request, the county clerk shall transmit to
14 [~~the secretary of state and to~~] the county [~~chairman~~] chair of
15 each of the major political parties in the county a complete
16 copy of entries made in the absentee ballot register. Such
17 transmissions shall be made once each week beginning four weeks
18 immediately prior to the election. A final copy shall be
19 transmitted on the Saturday immediately following the election.

20 F. If the county clerk has available the technology
21 to do so, at the request of a candidate or chair of a political
22 party of the county, the county clerk shall electronically
23 transmit to the candidate or chair via the internet the
24 information, when updated, on the absentee ballot register
25 indicating voters who have requested absentee ballots, returned

1 their absentee ballots or voted early in person."

2 Section 4. Section 1-6-14 NMSA 1978 (being Laws 1971,
3 Chapter 317, Section 11, as amended) is amended to read:

4 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER
5 PRECINCT BOARDS.--

6 A. Before opening an official mailing envelope, the
7 presiding judge and the election judges shall determine that
8 the required information has been completed on the reverse side
9 of the official mailing envelope.

10 B. If the voter's signature is missing, the
11 presiding judge shall write "Rejected" on the front of the
12 official mailing envelope. The election clerks shall enter the
13 voter's name in the signature rosters and shall write the
14 notation "Rejected--Missing Signature" in the "Notations"
15 column of the signature rosters. The presiding judge shall
16 place the official mailing envelope unopened in an envelope
17 provided for rejected ballots, seal the envelope and write the
18 voter's name on the front of the envelope and deposit it in the
19 locked ballot box.

20 C. A lawfully appointed challenger may examine the
21 official mailing envelope and may challenge the ballot of any
22 absent voter for the following reasons:

23 (1) the official mailing envelope has been
24 opened prior to being received by the absent voter precinct
25 board; or

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1 (2) the person offering to vote is not a
2 federal voter, federal qualified elector, overseas voter or
3 voter as provided in the Election Code.

4 Upon the challenge of an absentee ballot, the election
5 judges and the presiding election judge shall follow the same
6 procedure as when ballots are challenged when a person attempts
7 to vote in person. If a challenge is upheld, the official
8 mailing envelope shall not be opened but shall be placed in an
9 envelope provided for challenged ballots. The same procedure
10 shall be followed in canvassing and determining the validity of
11 challenged absentee ballots as with other challenged ballots.

12 D. If the official mailing envelope has been
13 properly subscribed and the voter has not been challenged:

14 (1) the election clerks shall enter the absent
15 voter's name and residence address as shown on the official
16 mailing envelope in the signature rosters and shall mark the
17 notation "AB" opposite the voter's name in the "Notations"
18 column of the signature rosters; and

19 (2) only between 8:00 a.m. and ~~[5:00]~~ 10:00
20 p.m. on the five days preceding election day, including
21 Saturday and Sunday, and beginning at 7:00 a.m. on election
22 day, under the personal supervision of the presiding election
23 judge, shall the election judges open the official mailing
24 envelope and the official inner envelope and insert the
25 enclosed ballot into an electronic voting machine to be

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1 registered and retained until votes are counted and canvassed
 2 following the closing of the polls on election night.

3 E. It is unlawful for a person to disclose the
 4 results of a count and tally or the registration on a voting
 5 machine of absentee ballots prior to the closing of the polls.

6 F. Absentee ballots shall be counted and tallied on
 7 an electronic voting machine as provided in the Election Code.

8 G. Absent voter precinct polls shall close in
 9 accordance with Section 1-6-23 NMSA 1978, and the results of
 10 the election shall be certified as prescribed by the secretary
 11 of state.

12 H. If an absentee ballot does not contain the
 13 identification required pursuant to Subsection D of Section
 14 1-6-5 NMSA 1978, it shall be handled as a provisional paper
 15 ballot in accordance with the Election Code."

16 Section 5. REPEAL.--Section 1-6-7 NMSA 1978 (being Laws
 17 1969, Chapter 240, Section 133, as amended) is repealed.

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